

DETROIT-WINDSOR TRUCK FERRY



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SHORT SEA SHIPPING MAY WORK IN YOUR **HARBOR**.
SHORT SEA SHIPPING MAY REDUCE HIGHWAY **MAINTENANCE**.
SHORT SEA SHIPPING MAY CHARGE A COMPETITIVE **FEE**.

BUT BEWARE OF THE SUBTEXT

OPPORTUNITY STATEMENT

With regulatory coordination between the US Department of Transportation (DOT) and Customs and Border Protection (CBP), Short Sea Shipping can develop into an important component of the U.S. Marine Transportation System and contribute to increased national freight capacity.

SHORT SEA SHIPPING

Short Sea Shipping (SSS) has an opportunity to relieve congestion on certain highways, thereby expanding national highway freight capacity and potentially reducing travel times. Heavily congested routes along the coast and at border crossings can be served with marine alternatives to keep freight moving and provide redundancy to critical infrastructure. Marine assets can be put in place in a relatively short period of time.

BUILD IT AND WILL THEY COME?

So, if you build a SSS network will they come? Can a SSS system be provided at a cost and a service level comparable to a highway lane? Can a highway carrier spontaneously and seamlessly use marine transportation for a portion of his trip to avoid highway or border congestion? Let's think this through.

DOMESTIC ROAD FREIGHT

Domestically, highway freight moves between shipper and receiver with minimal documentation – primarily a bill of lading. There is little involvement by the shipper regarding the route taken to move the freight to its final destination. Shippers are unaware of the details of how a less-than-truckload (LTL) carrier might consolidate multiple shipments into a single trailer or that a shipment may be interlined between several carriers en route to its final destination.

INTERNATIONAL ROAD FREIGHT

From NAFTA countries, highway freight is moved into the United States with standard Customs import documentation. Importers sending goods into the U.S. by truck expect their freight to cross the frontier via a land border crossing – highway, bridge or tunnel.

HIGHWAY FREIGHT RATES

In general, carriers determine highway freight rates based on the size, weight, destination and the delivery time requirements of the load.

HARBOR MAINTENANCE FEE (HMF)

The HMF applies, with limited exceptions, to domestic and foreign marine cargo unloaded at a U.S. port, including waterborne cargo arriving from our NAFTA partners. The HMF is not assessed on the harbor or port, nor is it assessed on the vessel's operator or owner. The tax is set on the value of the cargo, and is to be paid by the shipper or importer of the cargo. Congress's stated purpose in enacting the tax was to have commercial shippers fund the maintenance of U.S. harbors and ports.

Not subject to the HMF is domestic highway freight and imported cargos arriving in the U.S. via a land border - highway, bridge or tunnel.

So when you think of SSS as a viable transportation alternative, you must consider the additional cost element of the HMF. The tax is \$125 for every \$100,000 in (domestic) merchandise or import value. Because of the HMF, the diversion of traffic to waterborne services will be expensive and require an extraordinary level of coordination among the carrier, shipper and import community.

SSS AND HMF – SOME REALISTIC BUSINESS QUESTIONS

To utilize a SSS carriage alternative, the highway carrier must contact every shipper with freight in the trailer to seek permission to subject each shipment to the HMF at the expense of the shipper or importer. The domestic shipper/importer will calculate the additional cost (HMF) of shipping by water and make a business decision as to whether the time/money saved on the congestion avoidance route (SSS) is worth the additional tax and document filing obligation. If it agrees to incur the additional costs associated with the HMF, the domestic shipper/importer will need to accurately declare the shipment contents and value of the merchandise shipped. Shippers of freight and carriers are business operators, not social engineers. They will make shipping decisions based upon price and service.

Is it likely that the carrier will reduce his fees to compensate the domestic shipper/importer for the additional HMF cost? Often domestic transportation services are not booked directly by the shipper, so who does the carrier contact? An LTL carrier can have 50-100 or more shipments on a single trailer – who contacts them – sales, dispatch, the driver? What if one shipment among one hundred on an LTL load says no to the marine transportation segment?

SHORT SEA SHIPPING EXCLUSION - POLICY CONSIDERATIONS

The good news is that an exclusion from the HMF currently exists within the regulations for many potential SSS operations - 19 C.F.R. § 24.24(b) (4).

“The term “commercial vessel” does not include any ferry engaged primarily in the ferrying of passengers (including their vehicles) between points within the United States, or between the United States and contiguous countries.”

The bad new is that CBP has very narrowly interpreted this part of the regulation to the disadvantage of SSS.

CASE IN POINT: DETROIT-WINDSOR TRUCK FERRY (DTWF)

Since 1990, the DWTF has transported highway carriers across the Detroit River between the United States and Canada on a shallow draft, tug-barge combination. The 15 minute truck ferry crossing eliminates millions of miles each year off the route of hazardous material transports that are restricted from the local bridge and tunnel. In times of severe border congestion, the truck ferry also transports critical Just-In-Time freight. When a truck crosses the bridge or tunnel, no HMF is applicable. If the same truck diverts one mile down river to the DWTF, all freight is subject to HMF. For high value automotive freight, the additional HMF costs could range from \$250 - \$375 per truckload to cross the Detroit River by ferry.

QUESTION AND ANSWERS

What is the justification for the ferry exclusion - *"The term "commercial vessel" does not include any ferry engaged primarily in the ferrying of passengers (including their vehicles) between points within the United States, or between the United States and contiguous countries."* – not to apply to the DWTF?

Question: Does the DWTF operate as a ferry?

Answer: YES. Customs stated in HQ 230049: *"Insofar as the barge schedule we pulled from Truck Ferry's website indicates that the barge makes five daily trips across the Detroit River, the definition of ferry has...been met."*

Question: Is the ferry transporting passengers (including their vehicles)?

Answer: YES. Customs stated in HQ230049: *"Since the statute does not define the term "vehicles" or the term "passengers," the truck that boards the barge could arguably be a "vehicle" and the truck driver a "passenger" within the plain meaning of the statute."*

Question: Does the ferry operate between the United States and contiguous countries?

Answer: YES. Canada is a contiguous county.

Question: Is the DWTF engaged primarily in the ferrying of passengers (including their vehicles) between points within the United States, or between the United States and contiguous countries?

Answer: YES, BUT. Although, the DWTF is engaged exclusively in the transport of passengers (including their vehicles), and its operations are based on the number of passengers carried and the types of vehicles carried with them, Customs has ruled in HQ230049 that because many of those vehicles are carrying cargo, the DWTF is engaged primarily in the ferrying of cargo.

Question: Does the DWTF qualify for the ferry exclusion?

Answer: NO. Customs stated in HQ230049: *"Based on our review, the evidence, namely Truck Ferry's website solicitations and its own traffic statistics, does not support a conclusion that the vessel is a ferry engaged primarily in the ferrying of passengers (including their vehicles). Insofar as the subject barge is used to transport cargo for compensation and is not primarily engaged in ferrying of passengers and their vehicles, it does not fall within the ferry exception of 26 U.S.C. § 4462(a)(4)(B), and therefore, the cargo carried thereon, is subject to the HMF."*

It is important to note that the DWTF transports vehicles for compensation, not cargo, and charges the same amount whether or not a vehicle is carrying cargo. DWTF's rates are based on the amount of space occupied by the vehicle.

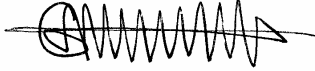
Unless this policy contradiction is addressed, the Customs ruling will be a major commercial detriment to SSS.

CONCLUSION

In that a National Marine Transportation System (MTS) is evolving in the United States, issues such as contradictory or confusing regulations promulgated and enforced by CBP need to be harmonized with MTS objectives. Transportation decisions should be coordinated and amended in concert with the DOT. The CBP's ruling branch's very narrow interpretation of the ferry exclusion will on its own hinder the development of a SSS network in America.

SSS is a significant, immediate and promising opportunity for the marine industry. The marine industry can step in to relieve congestion on portions of our major highway systems and at our border crossings. The resiliency and redundancy SSS can provide to critical infrastructure increases the responsiveness of our transportation system in the event of major disruption – natural or hostile. Short Sea Shipping will strengthen the domestic maritime industry, benefit trade and improve the environment.

In order to design and promote a cost effective and service competitive SSS program in America, there needs to be a regulatory framework that supports it. A more favorable interpretation of the HMF is a critical first step. After that we can be more confident that if we build it, they will come.

A handwritten signature in black ink, appearing to read "Gregg M. Ward". The signature is stylized with a circular initial and a series of loops.

Gregg M. Ward
Vice President
Detroit-Windsor Truck Ferry